



Littler Mendelson, P.C.
One Newark Center
8th Floor
Newark, NJ 07102

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC # _____
DATE FILED: 12/18/2019

Jedd Mendelson
973.848.4758 direct
973.848.4700 main
973.556.1612 fax
jmendelson@littler.com

December 16, 2019

VIA ECF AND FEDERAL EXPRESS

Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

The application is X granted
_____ denied

Edgardo Ramos, U.S.D.J

Dated: 12/18/2019
New York, New York

Re: Beirne Wealth Consulting Services, LLC v. Christopher Englebert, et al.
Case No. 1:19-cv-07936-ER

Dear Judge Ramos:

We write on behalf of Defendants for two reasons.

Enclosed are courtesy copies of opposition papers to Plaintiff's order to show cause seeking preliminary injunctive relief, which will arrive in chambers via Federal Express on Tuesday, December 17, 2019. We served these papers on Plaintiff's counsel on Sunday, December 15, 2019 in the morning. However, we did not file them via ECF, which is the second reason for this letter.

We write requesting that this Court treat this as a letter-motion for a sealing Order. The principal reason that we did not file our papers via ECF on Sunday morning is that Defendant Chris Englebert provided us with screen shots from his cell phone that this office filed in opposition to Plaintiff's injunction application because they support the statements in Chris Englebert's affidavit that clients initiated contact with him (and that he did not initiate contact with them). The screen shots show client names and phone numbers. I was reluctant to file unredacted copies of the screen shots because non-party clients most likely do not want their names and phone numbers (particularly cell phone numbers) to appear in publicly available documents on the court docket. (One reason I offer this rationale is the frequency of phone calls that many people, including the undersigned, receive daily from strangers offering products, seeking donations, and the like. Including phone numbers and names in a public filing presents another source of information that those arranging for such calls might exploit.) I was not aware that Mr. Englebert had these screen shots for inclusion in our papers until late last week and the press of time in drafting the papers, which caused this office to request adjournment of its filing deadline from Friday, December 13 to Sunday, December 15, left me unable to grapple with this issue until the weekend when the Court was unavailable.

Under the Second Circuit's three-step approach for analyzing sealing requests, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006), "[t]he privacy interests of innocent **third parties** should weigh heavily in a court's balancing equation" and "are a venerable common law exception to the presumption of access." *United States v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir. 1995)(emphasis added); *see also Oliver Wyman, Inc. v. Eielson*, 282 F. Supp. 684, 704, 707 (S.D.N.Y. 2017)(ordering redaction of identities of clients and internal assessments of a **non-party** employee); *Lown v. Salvation Army, Inc.*, No. 04-cv-01562 (SHS), 2012 U.S. Dist. LEXIS 148701, 2012 WL 4888534, at *2 (S.D.N.Y. Oct. 12, 2012) (ordering redaction of **non-party** salary information); *accord Dodona I, LLC v. Goldman Sachs & Co.*, 119 F. Supp. 3d 152, 156-57 (S.D.N.Y. 2015); *Saks Inc. v. Attachmate Corp.*, No. 14-cv-4902 (CM), 2015 U.S. Dist. LEXIS 52867, 2015 WL 1841136, at *19 (S.D.N.Y. Apr. 17, 2015). Accordingly, redaction of this personal information "vindicates the privacy interest" these **non-parties** have "in sensitive personal information" that outweighs the public's interest in disclosure and justifies protecting this information from public disclosure.

For the reasons set forth, Defendants request that the Court order redaction of the personal information set forth in the screen shots appended to Chris Englebert's Affidavit. Upon disposition of this application, Defendants will file the papers that they served via ECF.

Respectfully submitted,

/s/ Jedd Mendelson

Jedd Mendelson

cc: All counsel of record (via ECF only)